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July 14, 2005

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Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: San Pedro Railroad Operating Company, LLC
Abandonment Exemption In Cochise County, AZ
STB Docket No. AB-441 (SUB-NO 4X)

Dear Mr. Williams:

Enclosed for filing in the above referenced docket is the "Statement Of Chemical Lime Company In Opposition To San Pedro Railroad Operating Company, LLC's Petition For Exemption." We are filing today a faxed copy of Mr. Juzzli's verified statement and will provide the original by hand delivery as soon as it is received.

Thank you for your attention to this matter.

Sincerely

Melissa E. Maxwell

Enclosure

BEFORE THE SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-441 (SUB-NO. 4X)

SAN PEDRO RAILROAD OPERATING COMPANY, LLC
-- ABANDONMENT EXEMPTION --
IN COCHISE COUNTY, AZ

STATEMENT OF CHEMICAL LIME COMPANY IN OPPOSITION TO
SAN PEDRO RAILROAD OPERATING COMPANY, LLC's
PETITION FOR EXEMPTION

MELISSA MAXWELL
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Attorney for
Chemical Lime Company

Dated: July 14, 2005

BEFORE THE SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-441 (SUB-NO. 4X)

SAN PEDRO RAILROAD OPERATING COMPANY, LLC
-- ABANDONMENT EXEMPTION --
IN COCHISE COUNTY, AZ

STATEMENT OF CHEMICAL LIME COMPANY IN OPPOSITION TO SAN PEDRO RAILROAD OPERATING COMPANY, LLC'S PETITION FOR EXEMPTION

Pursuant to the Surface Transportation Board's Federal Register Notice, published June 24, 2005, Chemical Lime Company ("Chemical Lime") hereby submits this Statement in Opposition to a Petition for Exemption of Abandonment ("Petition") filed by San Pedro Railroad Operating Company, LLC ("SPROC") on June 6, 2005. Chemical Lime requests that the Board take note of the fact that, on June 15, 2005, after it filed its Petition, SPROC unilaterally ceased service on the line in question, without any regulatory authorization, and without agreement by Chemical Lime.[1] The reasons for Chemical Lime's Opposition are set forth below.

[1] SPROC received a letter dated June 10, 2005, from Edward W. Pritchard of the Federal Railroad Administration ("FRA") that recommended that SPROC cease operations on one bridge along the rail segments in question until it repaired the span. However, as the letter itself points out, the FRA does not have authority to order or authorize SPROC to cease operations. Only the Board can grant an abandonment request. SPROC could have made sufficient repairs to continue to operate the line while its abandonment request is pending. It should be ordered to do so immediately.

I. STATEMENT OF POSITION

A rail line may not be abandoned without prior approval under 49 U.S.C. §40903. Under 49 U.S.C. §10502, the Surface Transportation Board ("Board") may exempt a transaction or service from regulation when it finds that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. §10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

The Board has consistently held that abandonment transactions may be exempted if the shippers on the line do not oppose the abandonment, or where the revenue from their traffic is insufficient to cover the marginal cost of operating the line. See, e.g. Boston and Maine Corporation -- Abandonment Exemption -- In Hartford and New Haven Counties, CT, STB Docket No. AB-32 (Sub No. 75X) et. al., (STB served Dec. 31, 1996), slip op. at 5 ("Boston and Maine"). If the evidence presented by the petitioner is insufficient for the Board to make a determination, the petition will be denied. See Boston and Maine, slip op. at 6.

In support of its Petition, SPROC relies almost entirely on speculation that its abandonment request will be unopposed. Petition at 2, 7, 11, 13. However, speculation cannot substitute for evidence. As explained below, Chemical Lime does contest the abandonment, and opposes SPROC's Petition that its request for abandonment authority be handled through the Board's exemption procedures.

Because the Petition is opposed, and it contains no evidentiary showing that the current revenue from the traffic on the line is less than its operating costs, the Board has insufficient evidence to determine whether the statutory requirements of 49 U.S.C.

§10502 have been met. In Central Railroad Company of Indiana -- Abandonment Exemption, STB Docket No. AB-459 (Sub No. 2X) (STB Served May 4, 1998), the Board held:

> The petition for exemption procedure for abandonment is primarily intended to be used to expedite decisions and minimize regulatory burdens in uncontested or noncontroversial proceedings. It should not be used in proceedings like the one before us where detailed analysis of revenues and costs is necessary. Detailed revenue and cost analysis is generally reserved for the application process, which provides for a record building process and for Board analysis by requiring workpapers and other information needed to make an informed decision. This is not a case in which it is clear that revenue from local and overhead traffic is minimal compared to the cost of operating the line. Rather, a detailed analysis of revenue and cost evidence, and the resolution of various issues enumerated above, is required to determine the profit/loss of the line.

Accordingly, the Board should deny the Petition, without prejudice to the filing of an abandonment application under 49 C.F.R. §1152.22.

II. IDENTITY AND INTEREST OF CHEMICAL LIME

Chemical Lime, based in Fort Worth, Texas, manufactures lime from limestone, and provides lime-based products and services in plants throughout the United States. One of those plants is in Douglas, Arizona, near the Mexican border. SPROC delivers coal and coke to Chemical Lime's Douglas lime plant via the Curtiss-to-Charleston and Charleston-to-Paul Spur rail segments.[2] Both coal and coke are essential to Chemical Lime's manufacturing process, and without either one, the plant must be shut down.

In support of its request, Chemical Lime submits as Exhibit A the verified statement of Mark Juszli, Chemical Lime's Vice President of Business Development and Logistics ("Juszli").

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[2] Chemical Lime does not object to SPROC's abandoning the Bisbee-Bisbee Junction and Paul Spur-Douglas segments, which are not necessary to serve its plant.

SPROC informed Chemical Lime on March 22, 2005, of its intent to abandon the rail line in September 2005. SPROC maintains that it is "working with Chemical Lime to build a transloading facility along its line at Curtiss." Petition at 7. However, SPROC has never provided Chemical Lime with any proposal to build such a facility, and based on recent communications, does not appear to be pursuing the issue actively. Juszli at 2. On June 6, 2005, when SPROC filed its Petition, Chemical Lime requested a written proposal from SPROC detailing SPROC's plans to offset Chemical Lime's financial damages. SPROC did not respond at all until June 30, and then provided only a token offer.

Chemical Lime strenuously opposes the abandonment of the two segments that are necessary to serve its plant. Chemical Lime's costs would rise significantly were SPROC to abandon the entire line. At SPROC's insistence, Chemical Lime invested significant funds in improving the SPROC tracks leading to Chemical Lime's Douglas Plant. In reliance on SPROC's proposal to provide continued rail service for the plant's fuel needs, Chemical Lime invested significant funds in re-opening the Douglas Plant. Chemical Lime also advanced funds to SPROC to maintain the rail line segments while Chemical Lime was re-opening the Douglas Plant. If SPROC is permitted to abandon the line, the harm to Chemical Lime will be greater than the alleged harm to SPROC (which Chemical Lime contests as unsupported) of maintaining service to the Douglas Plant.

III. ARGUMENT

A. The Petition Fails To Make The Case That Expenses Exceed Revenues From Service To The Douglas Plant.

The Petition for Exemption fails to provide evidence that clearly demonstrates that revenue from shipments for Chemical Lime will be less than SPROC's marginal cost of operating the line to the Douglas Plant. As the Board stated in Soo Line Railroad Company -- Abandonment Exemption, STB Docket No. AB-57 (Sub-No. 48x) (STB served Nov. 17, 1999) (Soo Line):

> [I]n any abandonment case, whether authority is sought by application or petition, the railroad must demonstrate that the line in question is a burden on interstate commerce. Typically, in an attempt to make that showing, the carrier submits evidence to show that the costs that it incurs for the line exceed the revenues attributable to it.

SPROC's Petition fails to provide any supporting evidence detailing its cost claims, and in fact has omitted facts within its knowledge regarding the level of traffic over the line during 2005.

In Tulare Valley Railroad Company -- Abandonment and Discontinuance Exemption -- In Tulare and Kern Counties, CA, STB Docket No. AB-397 (Sub-No. 5X) (STB served Feb. 21, 1997) ("Tulare Valley"), even though the Tulare Valley Railroad provided precise per-mile maintenance costs and property tax costs to measure against the revenues it received for a particular rail line, the Board held that it was not enough information to justify granting an exception: "TVR submits no evidence, however, regarding its non-surcharge revenues, operating expenses, or indirect costs. Thus, ultimately, we do not have enough evidence to make a reasonable determination as to the line segment's profitability."[3]

SPROC has submitted no evidence demonstrating that the line to Chemical Lime's plant is a burden on interstate commerce. In fact, Exhibit B of the Petition, the Verified Statement of David Parkinson ("Parkinson Statement"), suggests just the opposite: "For the year to date through March 31, 2005, [SPROC] incurred $39,989 in direct operating expenses and earned $68,815 in operating revenue, for an operating gain of $28,826 for that segment." Parkinson Statement at 2. As explained further below, that figure, through March 31, 2005, significantly understates the annualized revenue for 2005 that SPROC would have realized if it had not unilaterally ceased service without authorization or agreement.[4]

Mr. Parkinson also states that "the subject rail lines have an estimated net liquidation value of $6 million including both right of way and track materials."

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[3] Compare Minnesota Northern Railroad, Inc.--Abandonment Exemption--Between Redland Junction and Fertile, In Polk County, MN, STB Docket No. AB-497 (Sub-No. 2X) (STB served Nov. 14, 1997), where the Board granted an exemption for abandonment. In that case, Minnesota Northern provided detailed avoidable on-branch costs: "(1) maintenance of way and structures; (2) maintenance of equipment (including depreciation); (3) transportation expense; (4) freight car costs (other than return); (5) return on value for locomotives; and (6) property taxes." The Board discussed the level of detail Minnesota Northern had provided to substantiate transportation costs, for example:

> MNN's transportation cost figure ($21,752 for the forecast year) is based on the assumption that 52 trains will run during the forecast year and that each trip will take 4.77 hours, for a total of 248 hours. This cost consists of crew wages of $13,387 (based on 496 man hours times $26.99 per hour), train fuel cost of $8,241 (based on $33.23 per hour times 248 hours), and small tools and supplies cost of $124 (based on $0.50 per hour times 248 hours).

No such detail is provided in SPROC's Petition.

[4] Moreover, the Petition provides no supporting evidence to detail its claims that SPROC incurred $276,911 in direct operating expenses in 2004, some of which at least were presumably non-recurring startup costs that could be recouped over time, rather than ongoing operating costs. Parkinson Statement at 2.

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Parkinson Statement at 4. However, SPROC provides no further explanation whatsoever regarding its estimate of net liquidation value. In Soo Line, faced with a similar lack of evidence regarding the value of the track materials, the Board found Soo's estimate of the net liquidation value of its line as "not supported." Without supporting evidence, the Board can give no weight to SPROC's assertion of the net liquidation value.

Because there is no evidence supporting the $6 million estimated net liquidation value, there is also no evidence to support Mr. Parkinson's statement "that the subject rail lines have an annual opportunity cost of $840,000." Parkinson Statement at 4. In contrast with SPROC's alleged opportunity costs, if Chemical Lime has to satisfy its coal and coke transportation needs through truck service, the increased cost of truck transportation could amount to $907,780 in 2005 alone. Juszli at 5.

Mr. Parkinson also fails to provide any evidence in support of SPROC's claim that it will cost $600,000 to bring segments of the rail line up to FRA Class I standards. Nor does SPROC provide any breakdown of its cost estimate that would allow the Board to evaluate the necessity and cost of repair. Under the requirements of Soo Line, this absence of material information is fatal: "A carrier seeking abandonment authority is only permitted to claim the cost of rehabilitating the line to meet FRA Class 1 safety standards. Therefore, we must have evidence that the track in fact falls below that level." Soo Line, n.13. The Petition provides no such evidence.[5]

SPROC makes little attempt to support its assertions about the revenue from the line, stating simply that it earned $56,640 in revenue in 2004, and $68,815 during the first

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[5] The Petition also fails to detail whether SPROC made any attempt to obtain federal assistance for repairs in the form of a RRIF loan or loan guarantee from the Federal Railroad Administration. See 49 C.F.R. Part 260.

three months of 2005. Parkinson Statement at 2. Because no breakdown of these revenues is given, it is impossible to tell, for example, whether the 2004 figure includes the $22,500 that Chemical Lime advanced SPROC for track maintenance. By Chemical Lime's estimates, SPROC earned approximately $108,460 in revenue from the 187 carloads of fuel that SPROC delivered to Chemical Lime in the first five and a half months of 2005. At that rate, SPROC's full-year revenue on Chemical Lime business alone for 2005 would be approximately $236,640. SPROC provides no evidence that would allow the Board to conclude that SPROC's costs of operating the relevant segments of the line are so high as to exceed expected 2005 revenue.

Viewed as a whole, SPROC's Petition fails to meet the minimum requirements for an exemption. In Soo Line, the Board dismissed a similarly inadequate petition: "While Soo has attempted to make such a showing [that the line in question is a burden on interstate commerce], it is without supporting documentation that would enable us to analyze the data that it submitted." The same reasoning applies in this case, and the Board should dismiss SPROC's petition.

B. Chemical Lime Relied On SPROC's Representations.

In their business discussions prior to the reopening of the line, SPROC gave Chemical Lime every indication that it wanted Chemical Lime's business. SPROC first approached Chemical Lime to see what Chemical Lime's plans were for its idle Douglas Plant. When Chemical Lime indicated to SPROC that it desired to bring the plant back on line, SPROC insisted that Chemical Lime improve the SPROC tracks leading to the plant. Chemical Lime paid a contractor $32,118 in 2004 to do so. Chemical Lime also provided cash payments totaling $22,500 to SPROC during 2004 to maintain the track.

Chemical Lime spent $1.47 million bringing the Douglas Plant back into service. SPROC did not indicate until June 15, 2005, a week after it filed its Petition, that $500,000 to $600,000 in additional repairs would be needed to bring the line up to operating condition. Juszli at 1-2. If SPROC is permitted to abandon the line, all of the investment by Chemical Lime potentially will be lost.

In Tulare Valley, the Board took the shipper's reliance into account: "Moreover, the shipper has shown that it has made a recent, substantial investment in its facilities based on continued rail service and has raised significant doubts as to the availability of viable transportation alternatives." As in Tulare Valley, the Board should deny the request for exemption.

C. The Exemption Procedure Is Inappropriate For An Abandonment Request That Raises Free Trade Issues.

SPROC stated that it acquired the rail segments in question in 2003 with the intent to use them to restore service from the United States to the Mexican rail system at Naco, Arizona. SPROC says, however, that it was not able to persuade the Mexican carrier, Ferromex, to restore the connection. Petition at 6. SPROC's failure in this particular instance to secure an agreement with Ferromex does not mean that such an agreement could never be reached. In the future, SPROC, or some other applicant, may wish to initiate cross-border service using the line that is presently in place. To allow SPROC to dismantle a rail line crossing the border into Mexico without any evidence in the record examining the international ramifications of such actions violates the Board's responsibility to promote the objectives of the North American Free Trade Agreement. See South Orient Railroad Company, Ltd -- Abandonment, STB Docket No. AB-545 (STB served Oct. 5, 1998) ("We have also considered the legitimate concerns of protestant about the effect of an abandonment on the local communities, the larger region, and the free trade objectives of NAFTA. We are extremely concerned about maintaining adequate rail facilities and infrastructure. We are also mindful of our responsibility to ensure that our actions foster the goal of North American economic integration embodied in NAFTA."). Dismantling an existing, usable track does not foster the goal of North American economic integration.

IV. CONCLUSION AND REQUESTED RELIEF

For the foregoing reasons, Chemical Lime requests that the Petition for Exemption be denied.

Respectfully submitted,

MELISSA MAXWELL
BAKER BOTTS L.L.P.
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004
(202) 639-7700

Attorney for
Chemical Lime Company

Dated: July 14, 2005

CERTIFICATE OF SERVICE

I hereby certify that I have served all parties of record in this proceeding with this document by United States mail.

July 14, 2005

Melissa E. Maxwell

DC01:421323.2

EXHIBIT A

VERIFIED STATEMENT OF MARK JUSZLI
VICE PRESIDENT, BUSINESS DEVELOPMENT AND LOGISTICS
CHEMICAL LIME COMPANY

My name is Mark Juszli. I am Vice President of Business Development and Logistics for Chemical Lime Company ("Chemical Lime"). The following is my verified statement supporting Chemical Lime's Opposition to the Petition for Exemption to Abandon filed by the San Pedro Railroad Operating Company ("SPROC").

Chemical Lime closed its plant in Douglas, Arizona, in 2001, and reopened it in October 2004. Chemical Lime spent approximately $1.47 million to bring the plant back into service. It is now producing and shipping lime from the Douglas Plant. SPROC provides transportation service to the plant for both coal (at a rate of about 18,000 tons per year) and petroleum coke (at a rate of about 20,000 tons per year), which are used as fuels to fire the plant's lime kiln. Prior to the restart of the Douglas Plant in 2004, Chemical Lime discussed its planned coal and coke consumption rates with SPROC. Since the restart, Chemical Lime has operated the plant in accordance with the consumption rates it discussed with SPROC.

SPROC approached Chemical Lime in early 2004 regarding Chemical Lime's plans for the idle Douglas Plant. It was my understanding that, at that time, SPROC was trying to make decisions regarding the use of its own idle assets. In advance of the restart in October 2004, and at the request of SPROC, Chemical Lime made two financial contributions to the maintenance of the rail line to the Douglas Plant. On June 1, 2004, Chemical Lime agreed to pay SPROC $2,500 per month for the period from March 1, 2004 to December 31, 2004, to help maintain the SPROC line and to cover SPROC's financing costs until Chemical Lime reopened the Douglas Plant. Chemical Lime made nine payments of $2,500 each, for a total of $22,500.

SPROC also required that Chemical Lime pay for improvements to the tracks leading from the SPROC line into the Douglas Plant. Chemical Lime paid Mountain States Contracting $32,118 to clean the tracks of windblown sand, improve drainage, replace crossties, replace tie plates and spikes, add ballast, and level rail.

At the time it requested these financial commitments from Chemical Lime, SPROC did not indicate that any bridge repairs were necessary, or that the railroad was contemplating a request for abandonment. SPROC also did not indicate that the line's continued existence was contingent on SPROC's reaching agreement with Ferromex. To the contrary, in late 2004, after discussing the matter with SPROC Chairman David Parkinson and Chief Executive Officer John H. Dugan, Chemical Lime was optimistic about SPROC's health. This optimism was further confirmed by the comments of David Parkinson in Progressive Railroading magazine (attached hereto as Attachment A).

SPROC first informed Chemical Lime of its intent to file a petition to abandon on March 22, 2005, with a target abandonment date of September 2005. SPROC offered to work with Chemical Lime in building a transload facility in nearby Curtiss, Arizona, to move coal and coke from trains to trucks for transportation to the Douglas Plant. Nothing has come of this offer, and in conversations with SPROC, it is clear that they are not actively pursuing this alternative. Chemical Lime also informed SPROC of its willingness to consider developing a transloading facility at another location in Deming, New Mexico. This alternative has significant commercial uncertainties, however, because rail service from Rincon, New Mexico, to Deming may also be abandoned. If the Deming alternative is not feasible, Chemical Lime will face the prospect of transloading in El Paso, Texas, at a much greater distance. Clearly, the costs associated with transloading in El Paso will be much higher than those associated with transloading in Deming due to increased truck freight distances.

On June 6, 2005, Chemical Lime requested a proposal from SPROC as to how it would offset Chemical Lime's financial damages and keep Chemical Lime whole as to the increase of the delivered cost of coal and coke. On June 30, 2005, SPROC offered Chemical Lime $50,000 if Chemical Lime would agree not to oppose its petition for an exemption. That amount is a small fraction of Chemical Lime's increased costs.

During a June 14, 2005, teleconference, SPROC unilaterally declared its intent to cease operations immediately, asserting that the rail line required about $140,000 in bridge repairs and other repairs totaling between $500,000 and $600,000. This was the first Chemical Lime had heard of any such repairs being necessary. SPROC has provided no rail service to Chemical Lime since that date.

Unless agreement can be reached on the economics and logistics of a Deming transload facility, Chemical Lime will be forced to transport about 350 tons per week of coal by truck from Hesperus, Colorado, to Douglas, Arizona, at a transportation cost of $96.69 per ton. In contrast, Chemical Lime paid $50.57 per ton in transportation costs for hauling coal by rail prior to SPROC's cessation of operations. With respect to coke, which is also essential to Chemical Lime's process, no coke has been delivered since SPROC ceased operations, because the provider is in Cheyenne, Wyoming. The cost differential to transport coke by truck rather than rail is estimated to be $60.53 per ton. Chemical Lime constantly canvasses the coke market. and has not identified any suppliers closer to Douglas than Cheyenne. The other suppliers that serve the intermountain Western U.S. are in Montana, Kansas, and East Texas.

Chemical Lime has enough coke stockpiled at Douglas to last until September 2005, but unless rail service is resumed, or some alternative transportation arrangement can be agreed upon, Chemical Lime may be forced to close its Douglas Plant again, losing the $1.47 million in startup costs, as well as the $54,618 that it invested directly in the rail line to the plant.

In 2001, when SPROC's previous owners filed a petition for an abandonment exemption, Chemical Lime did not file an opposition, because the Douglas Plant was shut down due to weakness in demand caused by soft copper markets, and Chemical Lime was unable to predict when the market might improve. Because the plant was closed during 2001, Chemical Lime received no coal or coke between 2001 and the preparations to restart the plant in September-October 2004. Since then, Chemical Lime has been taking delivery of coal at the rate of 18,000 tons per year (180 carloads per year) and coke at the rate of 20,000 tons per year level (200 carloads per year).[1]

The Douglas Plant is budgeted for 15 hourly and 11 salaried employees. Chemical Lime expects about the same staffing levels, with some possible additions, over the next few years. Annual payroll, including fringe benefits, is about $1.3 million. Chemical Lime pays approximately $80,000 per year in property taxes on the Douglas Plant. Chemical Lime also employs a contract miner at Douglas, who currently employs about 18 to 20 people in the mining operation. [2]

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[1] In 2004, Chemical Lime received 82 carloads of coal and coke. From January 1 to May 15, 2005, Chemical Lime received 146 carloads. From May 15 until the last car was received on June 13, just prior to SPROC's unilateral cessation of operations on June 16, Chemical Lime received 41 carloads.
[2] The forgoing assumes that Chemical Lime will continue to operate only one of its kilns at the Douglas plant. If Chemical Lime were to restart a second kiln at Douglas, employment and payroll would be increased in addition to an obvious increase in coal and coke requirements.

Chemical Lime advised SPROC of 30,000 to 40,000 total tons per year of combined coal and coke requirements prior to restarting the Douglas Plant, and SPROC fully understood the economics of service to Chemical Lime, as Mr. Parkinson acknowledged in the Progressive Railroading article in late 2004 (Attachment A at Pages 2 and 3). If the line is abandoned and Chemical Lime is unable to develop a Deming transload facility or effective backhauls from the Douglas Plant to Colorado and Wyoming, Chemical Lime's losses in 2005 alone are estimated to be:

1.	Cash investment in rail spur improvements	$ 32,118
2.	Nine cash payments to SPROC of $2,500	$ 22,500
3.	6/15 to 12/31 transportation cost of coal	$449,670
4.	6/15 to 12/31 transportation cost of coke	$403,492
	2005 Total:	$907,780

Of the four segments SPROC proposes to abandon -- Curtiss to Charleston, Charleston to Paul Spur, Paul Spur to Douglas, and Bisbee to Bisbee Junction -- Chemical Lime is only affected by the Curtiss to Charleston and Charleston to Paul Spur segments, because the plant is at Paul Spur. Chemical Lime does not object to SPROC's abandoning the Bisbee-Bisbee Junction and Paul Spur-Douglas segments.

MARK JUSZLI
Vice President
Business Development and Logistics

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VERIFICATION

STATE OF TEXAS

CITY OF FORT WORTH

Mark Juszli, being duly sworn according to law, hereby deposes and states that he is authorized to make the Verification, has read the foregoing document, and knows the facts asserted therein are true and accurate as stated, to the best of his knowledge, information and belief.

Mark Juszli

Subscribed and sworn to before me, a Notary Public, in and for the City of Fort Worth in the State of Texas, this 14th day of July, 2005.

Kathleen M. Reade

Notary Public

My Commission expires:

June 17, 2008

KATHLEEN M. READE
MY COMMISSION EXPIRES
June 17, 2008

DC01:421358.1

ATTACHMENT A

12/17/2004

Freight Rail

Alaska Railroad Corp. – Patrick Gamble
American Short Line & Regional Railroad Association – Richard Timmons
Arizona Railroad Group, The – Dave Parkinson
Asociación de Ferrocarriles Mexicanos – Emilio Sacristán
Brotherhood of Railroad Signalmen – W. Dan Pickett
Burlington Northern Santa Fe – Matt Rose
CSX Transportation – Michael Ward
Canadian Industrial Transportation League – Bob Ballantyne
Canadian National Railway Co. – E. Hunter Harrison
Canadian Pacific Railway – Rob Ritchie
Copper Basin Railway Inc. – L.S. "Jake" Jacobson
Dakota, Minnesota & Eastern Railroad Corp., and Iowa, Chicago & Eastern Railroad Corp. -
- Kevin Schieffer
Ferrocarril Mexicano S.A. de C.V. – Rogelio Veléz
Florida East Coast Railway L.L.C. – John McPherson
Iowa Interstate Ltd. – Dennis Miller
Kankakee, Beaverville and Southern Railroad – Bob Garner
Kansas City Southern – Mike Haverty
Maryland Midway Railway – Paul Denton
New York, Susquehanna & Western Railway – Walter Rich

Norfolk Southern Railway – Charles "Wick" Moorman
OmniTRAX Inc. – Robert Parker
Paducah & Louisville Railway Inc. – A.V. "Tony" Reck
RailAmerica Inc. – Charles Swinburn
Railmark Holdings Inc. – B. Allen Brown
Railroad Development Corp. – Henry Posner III
Raritan Central Railway, Pennsylvania & Southern Railway and New Jersey & Northern Railway – Eyal Shapira
Schneider National Inc. – Brian Bowers
Union Pacific Railroad – Jim Young
United Parcel Service – Mike Martini & Ron Magliochetti
United Transportation Union – Paul Thompson
Watco Cos., The – Terry Towner
Wheeling & Lake Erie Railway Co. – Larry Parsons

Patrick Gamble, president & CEO, Alaska Railroad Corp.
The year ahead:
When we look at what's coming, it is very much a function of what's happening in Alaska, and Alaska right now is doing pretty well economically. We're projecting a solid 2005, but it could just be a glimpse under the tent at what could be some solid growth on the freight and travel side in the future. Our mission is to enhance state and economic development, so when we want to increase net earnings, we pour every dollar we make into the railroad to fund projects to enhance the quality of life and economy in communities along the railroad.

Challenges:
I'd say the most important challenge we face is a continuation of improving our safety program. This railroad has not been a leader in past years in terms of safety. Three-and-a-half years ago when I came onboard, it was my intention to take stock of why that was and change the safety culture of the railroad. We've made dramatic improvements and we have changed the safety culture, but I want to continue that momentum. It's a matter of getting each employee to believe it's important and that you're serious when you say it's important.

Some workers say injuries, etc., are just part of business, but that's nonsense and we've changed that notion around. It's a slow process to change people around who have thought a different way for 20, 30 years.

Industry concerns:
I think the concern over the difficulty in being able to fund infrastructure is one that we have dealt with here on our railroad, and I realize how huge it is for other railroads. There is a lot of deferred upgrading that exists out there, and combine that with the difficulty of short lines to transition heavy cars to lighter rail, infrastructure costs to be able to handle that, not to mention technology ... all of that requires investment.

We first have to upgrade the line and invest in technology, and the total investment is overwhelming in the industry now. Our problem isn't nearly as difficult as it is on some railroads because we're very far along on bringing technology on here.

It's absolutely got to come with a national recognition. There's an economic impact that derives from solving this problem and I don't think it's been fully recognized at the national level, but I think it will. Unfortunately, a crisis might have to happen before it does. This may be one of those things that has to burn a little hotter before it gets addressed.

TEA-21:
Alaska Congressman Don Young is the chair of the House transportation committee. Reauthorization is important for us; there are a number of features we'd like to see in that bill and our delegation has a history of not forgetting its own state, so we've had an opportunity to make our needs known.

Richard Timmons, president, American Short Line & Regional Railroad Association
The year ahead:
It will be about the same as 2004 and maybe a little better. 2004 was very robust year. There are good indicators on the horizon. Class Is are worried next year won't be better than this year, but there aren't any new problems surfacing. Traffic is moving and the economy is OK.

Short-line industry challenges:
We'll keep an eye of the 286k issue -- car supply is an issue right now. It's difficult to get cars in certain regions. We're working with the Class Is; we have a task force looking into the problem.

Legislation:
We're going to try and protect the current tax credit we just got. We will also try to extend it, to be ready for the big freight volumes expected in 15 to 20 years. We're trying to determine how we fit into TEA-21 reauthorization – we want to be part of it. Also, how do we fit into the public/private partnerships out there? We want to be part of CREATE. ... We weren't part of the Alameda Corridor but we could have been a piece or two of that.

Dave Parkinson, president, The Arizona Railroad Group
The year ahead:
We are expecting a very good year. ... We doubled our number of customers this year, but that sounds like more than it is because we only had one customer, a nitrogen plant, when we reopened the railroad last year. We expect to increase carloads 50 percent next year [from 1,200 in 2004 to 1,800 in 2005] because a limestone mill reopened in October [the mill is near Douglas, Ariz.]. We also expect to add one or two customers in 2005, partially because of the strong economy, but also because there's some low-hanging fruit here in Arizona. We're tied to the mining industry, which was

in a bad situation a year ago when copper cost $60 a pound, but now copper costs $130 a pound. We're also looking at some transloading opportunities and some NAFTA opportunities because we're so close to the border. We [also] expect to acquire one short line in Arizona next year.

Challenges:
We continue to upgrade and rehab the San Pedro's track; we will do more of that next year. We might take advantage of the federal tax credits now available to short lines, but not for 286k because the rail is in good shape, more to replace ties and some track. ...Fuel prices are a big issue -- a gallon now costs about $2, and I remember when it cost 60 cents a gallon four or five years ago. We hope the dynamics in the oil world change. ... We're trying to convince Class Is to take on new business in the face of capacity and congestion issues. It's really a multi-year issue. It could take Class Is a decade to improve their capacity. We connect with UP, and the rumor was they weren't taking on additional business because of their congestion, but we found that not to be the case -- they took the business we began generating from the limestone plant.

Emilio Sacristán, Asociación de Ferrocarriles Mexicanos
The year ahead:
2005 will be a better year -- probably an increase between 5 percent to 10 percent in the traffic of the Mexican railroads, basically due to a rebound of the Mexican economy, which is finally showing sizable growth figures a little more than 4 percent on a yearly basis of the GDP. Also, traffic to and from the U.S. should continue increasing well.

Challenges:
The greatest challenges for the Mexican railroads are two: to continue regaining the freight lost in the previous decades to trucks, and to smooth the differences between them. [For North American railroads, the greatest challenge is to] overcome the different hurdles still present in the development of intermodalism, such as, terminal capacity constraints, railroad interchanges, border crossings, etc.

W. Dan Pickett, president, Brotherhood of Railroad Signalmen
The year ahead:
We had 60/30 [retirements] in the '70s and railroads were able to handle it; for whatever reason, the railroads didn't think people would leave after the latest 60/30. In the next five years or 10 years, a lot of people will reach retirement age. The railroads really haven't made plans to replace them -- there will be more hiring next year, but I don't see plans to hire signaling or maintenance workforce. Thousands will be hired, but the vast majority will be in the operating craft.

Challenges:
Negotiating our agreements -- we're hoping we can work through agreements and not end up in a PEB. We're trying to form a coalition. There are 11 groups, and it would be the first time it would

include operating and non-operating crafts. We want to negotiate with the NCCC on one basic agreement covering wages, benefits, such as holidays and vacations, and health care. Each union would negotiate its own work rules --nine of the 11 groups are on board and the other two said they would at least attend the initial meetings. ... The idea of negotiating together has been around for a long time.

Positive train control: We're not seeing the railroads changing out 200 to 300 miles – if there are storms, like the hurricanes in Florida, then the railroads will install positive train control instead of replacing the old system. The railroads are concerned about the expense. We'd like to see it installed more.

Matt Rose, chairman, president & CEO, Burlington Northern Santa Fe
The year ahead:
Last year at this time, we thought we'd see 6 percent growth in 2004, but it's been more like 10 percent to 11 percent growth -- that type of growth for a railroad is historic. Now, we're at the same point we were last year, wondering what type of growth we'll see next year ... 10 percent to 11 percent is not realistic; we'll see double-digit growth for intermodal, but the rest will dampen. I think 3 percent to 4 percent growth is reasonable. So, 2005 will definitely be a growth year, just not as much as this year, and that's OK -- it will give us a chance to reset our network.

If we knew last year at this time that we would have 11 percent growth in 2004, we could have handled it [but] we would have handled our resources differently. I'm thrilled with the way our company handled the volume this year, people really stepped up. But service in the industry went from an undertone of shippers frustrated with rail service to an undertone of shippers questioning our ability to provide service. We want to make sure we plan the railroad and can handle volumes. ... Another terrorism event would do damage to the economy, but organically, the economy looks good, it's robust.

Challenges:
Return on investment: We just passed the 10th anniversary of the [BN-SF] merger, and in that 10 years, we moved 75 million loads of freight and invested $19 billion in capital, yet our returns last year were 6.5 percent -- it's a missed a value proposition. At the end of the day, investors want more than a 6.5 percent return; they want us to have enough to reinvest, but not exceed our cost of capital. If we raise returns, we're being more productive

Workforce:
Baby boomers are getting older, so attrition will ramp up. We understand hiring, we're getting good at it; we had a job fair in the Twin Cities and 3,800 turned out. ... The light bulb has been turned on -- people used to come to us for jobs, but now we have to educate people about our industry. When I got a job in this industry 25 years ago, they only required a urine test; now, we require people to take an aptitude test, a cognitive test, a fitness test.

The quality of the people we're hiring today is good. We get a sense from our surveys that people like to be challenged, so we want people to like what they're doing and that they feel challenged. Forty percent of our expenses are people costs. ... We think that with the technology we're implementing and the influx of workers because of attrition provides an opportunity to find the next productivity level.

Legislation:
We need general tort reform, it's a burden to us. We want TEA-21 to include earmarks for CREATE -- public/private partnerships are a good way to add capacity into the whole rail network. CREATE can act as a good footprint. To do another one, we'd look at Los Angeles, Houston, Denver and Kansas City. When they built the Alameda Corridor, people said, "We want more of those." Traditionally, Congress has taken a "don't do them harm" approach to rail legislation because they aren't providing us much; they need to do more than find ways to just not screw it up for us.

Michael Ward, chairman and CEO of CSX Corp., and president of CSX Transportation
A mid-November 2004 CSXT update:
We're pleased with our progress [from the third quarter to the fourth quarter] -- we implemented the ONE Plan in the northern part of our system in the third quarter and saw transit times improve. *[Note: "ONE" refers to the "power of one" -- moving one less mile or traveling one fewer hour during transit. The plan centers on redesigning the Class I's network to improve train blocking and schedules, and reduce transit times and terminal handlings.]* Then we implemented it in the southern part but five days later, we had the start of the six hurricanes and tropical storms -- so we're concentrating on the southern piece. We're showing recovery and that's after the hurricanes and in the middle of the fall peak. We're seeing improvement in every metric category. In the third quarter, our rail income went up 12 percent and that's despite the hurricanes.

There's lots of demand out there -- we're striving to meet all the demand. Our progress is good and our path is good. Our estimate is that our fourth quarter will meet the Street's consensus. That would be four quarters in a row of improvement. Now, we just have to go for four more quarters in a row next year.

The prospects for growth:
It definitely will be a better year. Demand is still going strong. Coal is strong and inventories are low; utilities are trying to meet their customers' needs and rebuild stockpiles. All indications are the economy is still strong. We have the ONE Plan and a team in place that will continue to improve service, which usually improves your cost structure. The only thing working against is the unknowns -- what will happen with fuel prices? -- or the unexpected such as a terrorist strike that shakes consumers' confidence.

Challenges:
The biggest is executing the ONE Plan well -- continuing to serve customers the way they're looking [to be served] will help grow the business. We implemented Phase I of the plan, which focused on line haul, reducing terminal handlings and transit times. In '05, we're going to implement Phase II, which will focus on local service -- deliver at a time that makes sense to the customer. ...

Another area of concern is safety. I'm not happy with our safety performance compared to our peers the past year or so. We've had the fewest track and equipment caused derailments but we haven't been very good with human factor incidents and personal injuries. We've been focusing on getting trains out on time, which has taken the edge off of some safety activities. We have room to be better and we will be better. [Executive Vice President and Chief Operating Officer] Tony Ingram pushes both safety and getting the train out on time.

[Another challenge is] fuel -- traditionally, we haven't hedged any fuel. The previous head exec didn't believe in doing it, but I disagree. This year, we've hedged in the low 20s [percent] and for '05 we've hedged about 50 percent.

Hiring: We will hire 1,400 T&E workers this year and next year we'll hire a bit more than that primarily because of attrition. A number of people are approaching the 60/30 retirement age. We cut 900 administrative positions this year to be more responsive and flexible. It was a tough process, but most of the wounds are healing now and we won't need to do that again next year.

Challenges:
The spike in traffic demand -- we can gear up for the spike but it takes time to gear up. It's really an issue of rail and truck being able to meet all the demand out there. We can create free capacity by running better and try to price this business right to justify investments.

Legislation:
We don't earn our cost of capital as an industry -- [we] need to get government involved in providing incentives to make us want to invest. We will continue to monitor re-regulation efforts. Also: The industry needs to get behind the Energy bill. This is a big issue for our customers. Developing clean coal technologies is more efficient and environmentally friendly.

Bob Ballantyne, president, Canadian Industrial Transportation League
The year ahead:
Most shippers are pretty optimistic and feel good about next year, which means they're worried about logistics. One member, an importer, said that if service doesn't improve at the West Coast ports, they would ship from the Orient through the Panama Canal to the East Coast ports, like Boston and Halifax. It's not what they want to do, but they feel they have to, especially with problems at the port of Vancouver.

Challenges:
Anecdotally, we hear from members about capacity problems in the Canadian rail market, such as Calgary to Vancouver on CPR, and pricing on railways --when their confidential contracts expire, railroads want to go to tariff pricing or renew confidential contracts for one year instead of multiple years. It's harder for shippers to control costs and uphold competitive position. Also, shippers are concerned about ancillary charges, such as a fuel surcharge -- they are skeptical that a fuel surcharge reflects what railroads are paying additionally for fuel. I saw what CPR said in a quarterly report that they had hedged fuel, but also adjusted their surcharge because of current oil prices, so they're saying they got a low price but are adjusting for higher prices.

Shippers feel it's a poke in the eye. [Some] also are saying railroads are dropping some services like weighing cars, so they have to scramble to find a way to weigh cars. They're concerned about demurrage and storage charges, too.

Legislation:
I believe next year the government will propose another bill or amendment [to the Canadian Transportation Act] that proposes changes to dispute resolution, open access and competitive line rates – shippers are saying existing shipper protections are not enough, and railroads are saying those in place are good enough. There are some areas that are better than others for competitive access.

Workforce:
It's a concern to everyone – railroads have downsized and had hiring freezes so the average [employee] age is up, and there are concerns about railroads losing skilled and experienced workers. It also is driving up salaries, so compensation cost per ton mile is up a bit. Look at the U.S. Class Is and how many people they've hired this year – it takes so long to get people trained and productive. There's such a long lead time.

E. Hunter Harrison, president & CEO, Canadian National Railway Co.
The year ahead:
We're coming off a record year in 2004 -- the only thing that kept it from being a grand slam year was the work stoppage *[a 25-day Canadian Auto Workers' strike in March]*. [As of Nov. 17,] the fourth quarter is going very well; there's no indication that says the trend that has been developed in 2004 will not continue into 2005. ... Our metrics will improve across the board. We're expecting a very nice 2005. Whether it's free cash flow, earnings per share, operating ratio -- all those metrics are going the way we predicted. In fact, they're ahead of schedule. Our success is not subject to the economy going great guns – if the economy slows a little bit, we'll do well. This is a fundamental story. ... This model is hitting on all cylinders.

Our most solid bottom line is merchandise – everything looks pretty good on a relative basis. There might be a little softening in lumber, but across the board in merchandise, I think it'll be a nice year. It'll probably be ahead of the curve. We've seen gangbusters improvement.

Intermodal learned from carload; now, carload is borrowing from [intermodal – specifically, CN's Intermodal Excellence Program, or IMX]. There'll be day-of-the-week pricing, capacity management, a total change in our sales and marketing efforts. We'll be doing away with business units. It's a fundamental change. It's being done internally; there is not a "go" date set yet. It'll probably be in the first quarter.

Challenges:
Labor issues have been settled, they're behind us ... and relations have improved. But we need to keep working real hard at it. We've got years of tradition working against us. We made a real breakthrough in the U.S. with hourly agreements; now, we're trying to change in Canada, and change is hard to manage. We're spending a lot of time and effort right now to move away from the adversarial. I think [labor and management] both know this model is broken -- it just takes understanding on both sides. I'm confident we'll be as successful [in Canada] as we have been in the U.S.

Rail network capacity:

We're blessed that we don't have some of the issues others are dealing with, but I would hasten to add that we're not sitting on our laurels. There are a lot of things going on that I'm encouraged about. ...

One, there's the recently announced agreement with CP and NS on the old D&H – it's a very positive industry initiative where the carriers have agreed to take the shortest route. We're talking better utilization, better asset management, better service. There's something in it for everybody. Two: You've seen the announcement of some co-production agreements with CP that we made six weeks prior, plus two or three others. And the list is not over. And the encouraging thing in the U.S. is the new protocol agreements [with CSXT, UP, BNSF and, soon, NS. CN also has had a marketing alliance with KCS since 1998]. We're identifying the best routes with the least congestion. These agreements allow us to say, "Our customers' traffic is taking the optimum route." By doing that, we'll be adding excess capacity.

Rob Ritchie, president & CEO, Canadian Pacific Railway
On 2004:
It's been an inflective year; there's been demand to match a lot of production. We're a microcosm of the industry ... [and] problems in the entire freight industry are making rail more attractive. It's been a good year with good inflection.

The year ahead:
Our integrated operating plan will ground us – we're going to roll out our Thoroughbred Yard Enterprise System. I'm very optimistic. We will see growth. ... We could handle unlimited growth in containers. I don't see any slow down in intermodal traffic.

Challenges:
Responding to the high level of demand – we have to find ways to improve the service side of the equation. There have been improvements, [but] we need to be more fluid. I tell our people that fluidity isn't just trains -- we have to keep our entire company on schedule and in control. It comes down to train crews not running half-empty trains, getting empty cars back on time, employees making the right decisions. Some of it is common sense and some is non-intuitive.

Capacity continues to be a challenge. We have a $500 million long-term plan to expand capacity. It could be done in as little as six years or in 10 years; it's a proposed plan right now. It addresses capacity where we need it. We're pretty sure we're going to address the western corridor next year so we've spent $20 million to get materials in place. We're still working on the North American summit on capacity *[that Ritchie proposed earlier this year]*. We expect to have some clarity on that by the end of the year. We need clear public policy that understands how important rail capacity in Canada is.

Coordinated agreements [such as the ones CPR has with NS and CN]: It's an answer to capital investment and not needing horizontal consolidation. Each Class I has a unique footprint; going down to four [major railroads] or two would bring regulation that's negative. The things you do as one company can be done as two -- you get more people invested in train design and marketing. It's a way to deal with interchanges and handoffs, which are very complicated. I believe there will be more coordinated agreements among Class Is

Human resources: We have to find ways to attract younger generations -- our 24/7 jobs aren't the easiest in the world. We have excellent pay and benefits

Regulation: We need to go on the offensive – capital expenditures are a big one because we can show policymakers we're creating jobs and bringing relief to 2020 [*he's referring to the projection that freight will increase about 60% by the year 2020*].

Fuel: It will continue to be a challenge. We're pushing surcharges pretty hard; I think we, as an industry, have learned how to do surcharges quicker and better and cover more of our basket of products. Our competition, the trucks, is doing it, as well. We're covering about 70 percent of our costs right now. We're also facing higher material prices because of steel prices, and paying more for rail, wheels and track materials.

L.S. "Jake" Jacobson, president & COO, Copper Basin Railway Inc.
The year ahead:
I am expecting a much better year in 2005. I simply couldn't be more optimistic for the railroad industry. Ten years from now we will look back at 2005 as the beginning of the "Railroad Renaissance."

With the birth of the old H.R. 876 and the tax credits this bill provides, we will see a feeding frenzy of infrastructure upgrades. With the increased capacity from these upgrades, we will see the surge of Class I traffic volumes.

We finally see the general public waking up to smell the brown cloud and the concerns of snarled freeway traffic, fuel costs and congestion. In the [November 2004] election, Arizona's transportation Proposition 400 supporting rail passed by 57 percent, as did similar referendums across the nation. The voters are now starting to see rail as a key part of the solution. The momentum is here. We need to continue this full-court press and keep railroading's best ambassadors in the public eye and ear.

I am very excited about the new railroad industry-supported grass-roots program GoRail, which is focused on bringing together the rail industry's employees and retirees in support of public policies favorable to expanding the hauling capacity of the nation's railroads. The GoRail steering committee is a very distinguished team of heavy hitters, some of whom I have known and respected for over 30 years. With this GoRail team, railroading is a passion, not just a business, and together we will continue to deliver the American dream. Yes, who would ever guess that I am very bullish on the future of rail?

Challenges:
With the infrastructure upgrades and increasing traffic volumes, there will be employment increases and opportunities. Fortunately, the industry has a well-seasoned and professional workforce in place to mentor and train new fledgling workers. For example, we have over 200 injury-free "Jake" award railroads just waiting to pass their professionalism and safety expertise on to the next generation. These 200-plus railroads have safety down to an art form and I am damn proud of each of them.

Speaking of employment and the workforce – a few years back, we all knew with plenty of advance notice the anticipated effects of the 30-60 Railroad Retirement Board change. So it really wasn't rocket science – matter of fact, it was more like kindergarten. However, the lack of planning by a few certainly put the industry and our good shippers in a tailspin.

If we are going to bring the goals of GoRail to fruition, we must partner with our shippers and fellow railroaders, both working as well as retired. It will certainly be a challenge to bring the badly bruised shipper back under our tent. They have heard all the excuses, from mergers to labor shortages for greed to sloppy management. I think when the shipper sees the integrity of the top-shelf team heading up the GoRail steering committee, they will sign on ... but we damn well better not disappoint them again.

The industry needs more unity and self-discipline. I find it very disappointing when a neighboring railroad gets itself in a meltdown situation, then refuses an offer of help to switch and block cars, then hires trucks to haul the customer's badly delayed freight. To me, this is not railroading. We need to help one another, not call in the competition. The regional and short-line people are face-to-face daily with shippers and customers, and we are very good at solving problems, switching and blocking traffic. When Big Brother starts getting into a tailspin, they need to call in their short-line partner to help before the spin turns into a meltdown.

Kevin Schieffer, president & CEO, Dakota, Minnesota & Eastern Railroad Corp., and Iowa, Chicago & Eastern Rail